IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 76 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

R.U.SHAH,FOOD INSPECTOR,SURAT MUNICIPAL CORPORATION,SURAT

Versus

VELABHAI DOSABHAI RABARI

Appearance:

MR KI SHAH for Petitioner

NOTICE SERVED for Respondent No. 1

MS HANSABEN PUNANI, APP for Respondent No. 2

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 24/03/2000

ORAL JUDGEMENT

1. The complainant Mr. R.U. Shah serving in Surat Municipal Corporation filed complaint being PFA Case No. 48/1982 before the Ld. Judicial Magistrate First Class,

Surat against the respondent (for short 'the accused') for the offence punishable under sections 7 and 16 of the Prevention of Food Adulteration Act (for short 'PFA Act') on following brief facts :-

2. The complainant as a Food Inspector had an occasion to go to the place known as Vadi Falia near Ambaji Road, more particularly near the premises bearing Nondh No. 864 of ward no. 9 at about 7.15 in the morning on 31/7/1982. The accused was proceeding on his bicycle with 12 litres of buffalo milk in the utensil carried on his bicycle for the purpose of retail sale thereof. The complainant stopped him and inquired of him in presence of a witness having been called by him. After interrogating the accused he had taken sample of milk from the brass utensils containing 10 litres of buffalo milk, after stirring it with the measuring instrument (Mapiyu). Making three equal parts he saw that each part thereof being collected in cleaned bottle while adding required formalin of 40% strength therein. The samples accordingly collected in the bottles were duly sealed after affixing required paper slips thereon containing the particulars of the samples and his seal. Out of the three bottles of sample one was sent for analysis to the public analyst and two bottles were sent to the Local Authority. Upon receipt of the report from the Public Analyst on or around 21/8/1982 it was noticed that the fat contents were less to the extent of 9.4% and there was adulteration of water in the milk accordingly to the extent of 11%. After obtaining necessary sanction from the Local Health Authority he filed the complaint in question before the Ld. Magistrate.

3. The accused pleaded not guilty to the charge of adulteration. Upon appreciation of the evidence of the complainant exh. 14 and prosecution witness Ishvarbhai Nanabhai exh. 49 the Ld. Magistrate found that the prosecution could not establish the charge against the accused beyond reasonable doubt. He held that the procedure as alleged to have been followed by the complainant was not established to have been so followed beyond reasonable doubt. He also held that the samples of milk obtained from the accused could not be established to be adulterated as alleged. He, therefore, rendered impugned judgment and order of acquittal as aforesaid.

4. This appeal has come up for final hearing before this Court today. Mr. K.I. Shah, learned advocate for the complainant (appellant herein) and Ms. Hansaben Punani, Ld. APP for the State have been heard. Since the accused has not been represented, his cause was

examined before any fresh notice was required to be issued to him. Under such circumstances, evidence of the aforesaid witnesses was read before this Court. It would appear from the report of the Public Analyst appearing at exh. 20 that fat was found to be 4.8% according to Gerber's method and solid non fat was found to be 8.0% according to Gravimatric method. The required standard for buffalo milk is 6.0 and 9.0 respectively. It would thus appear that fat was lower and the deficiency of fat-sum-solids was around 9%. However, if these reports were to be accepted, it would be clear that the milk in question was not in accordance with the prescribed standard under Article 11 appearing in Appendix-B to the Prevention of Food Adulteration Rules, 1955. But then the Ld. Magistrate has proceeded to scrutinise the evidence which was placed on record before him. In the first place he verified the report of Public Analyst appearing at exh. 20 and found that one Mr. Mukund M. Shah being the Technical Assistant signed the report. Referring then to the evidence of the complainant it clearly appears that name of Mr. M.N. Shah was not published in the Gazette as a Public Analyst. Besides, he also found that there was no explanation for filing the complaint late by around one and half month after receipt of the report of the Public Analyst by the Local Health Authority. He has also appreciated the evidence with regard to drawing of the Panchnama. He has, therefore, come to the conclusion that in the absence of evidence of other witnesses and on account of the aforesaid deficiency in prosecution evidence it was not possible to hold the accused guilty of the charge which he faced.

5. In the background of the nature of the aforesaid report of the Public Analyst the evidence was re-examined and nothing substantial could be pointed out so as to make inroad in the finding of the Ld. Magistrate.

6. This is an acquittal appeal and unless it is shown that the order of acquittal is perverse or the Ld. Magistrate has not considered any vital part of the evidence at all, it is not possible to interfere with the acquittal.

In the result, this appeal deserves to be dismissed. Order accordingly.

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PVR.